Supreme Court, U.S.
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No. 91-699

In The

Supreme Court of the United States

October Term, 1991

JOSEPH J. WALTMAN,

Petitioner,

vs.

FAHNESTOCK & CO., INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR PETITIONER

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PETITIONER'S REPLY MEMORANDUM

Fahnestock & Co., Inc., in a footnote in its opposing brief in No. 91-699, urges the Court to reconsider its denial of Fahnestock's prior Petition for a Writ of Certiorari, No. 91-508 and bases this extraordinary request on "the subsequent publication of a decision by New York's Appellate Division," implying that there has been some change in the law (Brief in Opposition, page 1). In so doing, Fahnestock has deliberately misled the Court. The New York decision in question, *Herzfeld & Stern v. Beck*, 572 N.Y.S. 2d 683 (1st Dept. 1991) was decided on August 1, 1991, more than one month before Fahnestock filed its Petition. Fahnestock's suggestion that the decision was rendered subsequent to its filing or to the Court's denial of the Petition is thus a total misrepresentation. Respondent also suggests that the *Herzfeld* case is now the law of the State of New York. In fact, on November 27, 1991, a motion for leave to appeal to the New York Court of Appeals was filed on behalf of Warren Beck and the Court of Appeals has not decided the matter. Therefore, the Appellate Division opinion does not represent the law of the highest court of the State of New York and is not binding on any federal court.

Fahnestock's egregious misrepresentation concerning its previously denied petition is but one of many factual misrepresentations in its Brief.

In light of Fahnestock's disregard for its obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure, Waltman believes not only that Fahnestock's untimely and dishonest request for reconsideration should be denied but that sanctions should be imposed on Fahnestock for causing Waltman to incur unwarranted expense in order to correct this critical misrepresentation.

Respectfully submitted,

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